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1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3  
4 JONATHAN C. KALTWASSER, on  
5 behalf of himself and all others similarly  
6 situated,

7 Plaintiffs,

8 v.

9 AT&T MOBILITY LLC f/k/a CINGULAR  
10 WIRELESS LLC,

11 Defendant.

CASE NO. 5:07-cv-00411-JF

STIPULATED PROTECTIVE ORDER

12 1. **PURPOSES AND LIMITATIONS**

13 Disclosure and discovery activity in this action are likely to involve production of  
14 confidential, proprietary, or private information for which special protection from public  
15 disclosure and from use for any purpose other than prosecuting this litigation would be warranted.  
16 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated  
17 Protective Order. The parties acknowledge that this Order does not confer blanket protections on  
18 all disclosures or responses to discovery and that the protection it affords extends only to the  
19 limited information or items that are entitled under the applicable legal principles to treatment as  
20 confidential. The parties further acknowledge, as set forth in Section 10, below, that this  
21 Stipulated Protective Order creates no entitlement to file confidential information under seal;  
22 Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards  
23 that will be applied when a party seeks permission from the court to file material under seal.

24 2. **DEFINITIONS**

25 2.1 **Party**: any party to this action, including all of its officers, directors, employees,  
26 consultants, retained experts, and outside counsel (and their support staff).

27 2.2 **Disclosure or Discovery Materials**: all items or information, regardless of the  
28 medium or manner generated, stored, or maintained (including, among other things testimony,  
transcripts or tangible things) that are produced or generated in disclosures or responses to

discovery in this matter.

2.3 "Confidential" Information or Items: information (regardless of how generated, stored or maintained) or tangible things that qualify for protection under standards developed under Federal Rule of Civil Procedure 26(c).

2.4 "Highly Confidential - Attorneys' Eyes Only" Information or Items: extremely sensitive "Confidential Information or Items" whose disclosure to another Party or non-party would create a substantial risk of serious injury that could not be avoided by less restrictive means.

2.5 Receiving Party: a Party or non-party that receives Disclosure or Discovery Material from a Producing Party.

2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery Material in this action.

2.7 Designating Party: a Party that designates information or items that it produces in disclosures or in responses to discovery as "Confidential" or "Highly Confidential - Attorneys' Eyes Only."

2.8 Protected Material: any Disclosure or Discovery Material that is designated as "Confidential" or "Highly Confidential - Attorneys' Eyes Only."

2.9 Outside Counsel: attorneys who are not employees of a Party but who are retained to represent or advise a Party in this action.

2.10 House Counsel: attorneys who are employees of a Party.

2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their support staffs).

2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action and who is not a past or a current employee of a Party or of a competitor of a Party's and who, at the time of retention, is not anticipated to become an employee of a Party or a competitor of a Party's. This definition includes a professional jury or trial consultant retained in connection with this litigation.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

### 3. SCOPE

The protections conferred by this Stipulated Protective Order cover not only Protected Material, but also any information copied or extracted therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations or presentations by parties or counsel to or in court or in other settings that might reveal Protected Material. This Stipulated Protective Order applies to the parties' Protected Material as well as to Protected Material of third parties.

### 4. DURATION

Even after the termination of this litigation, the confidentiality obligations imposed by this Stipulated Protective Order shall remain in effect indefinitely until a Designating Party agrees otherwise in writing or a court order otherwise directs.

### 5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or non-party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. A Designating Party must take care to designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process, or to impose unnecessary expenses and burdens on other parties), expose the Designating Party to sanctions.

If it comes to a Party's or a non-party's attention that information or items that it designated for protection do not qualify for protection at all, or do not qualify for the level of

1 protection initially asserted, that Party or non-party must promptly notify all other parties that it is  
2 withdrawing the mistaken designation.

3 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
4 Stipulated Protective Order (*see, e.g.*, second paragraph of section 5.2(a), below), or as otherwise  
5 stipulated or ordered, material that qualifies for protection under this Stipulated Protective Order  
6 must be clearly so designated before the material is disclosed or produced.

7 Designation in conformity with this Stipulated Protective Order requires:

8 (a) for information in documentary form (apart from transcripts of depositions  
9 or other pretrial or trial proceedings) that the Producing Party affix the legend "Confidential" or  
10 "Highly Confidential - Attorneys' Eyes Only" at the top of each page that contains protected  
11 material. If only a portion or portions of the material on a page qualifies for protection, the  
12 Producing Party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate  
13 markings in the margins) and must specify, for each portion, the level of protection being asserted  
14 (either "Confidential" or "Highly Confidential - Attorneys' Eyes Only").

15 A Party or non-party that makes original documents or materials available for inspection  
16 need not designate them for protection until after the inspecting Party has indicated which  
17 material it would like copied and produced. During the inspection and before the designation, all  
18 of the material made available for inspection shall be deemed "Highly Confidential - Attorneys'  
19 Eyes Only." After the inspecting Party has identified the documents it wants copied and  
20 produced, the Producing Party must determine which documents, or portions thereof, qualify for  
21 protection under this Order, then, before producing the specified documents, the Producing Party  
22 must affix the appropriate legend ("Confidential" or "Highly Confidential - Attorneys' Eyes  
23 Only") at the top of each page that contains Protected Material. If only a portion or portions of  
24 the material on a page qualifies for protection, the Producing Party also must clearly identify the  
25 protected portion(s) (*e.g.*, by making appropriate markings in the margins) and must specify, for  
26 each portion, the level of protection being asserted (either "Confidential" or "Highly Confidential  
27 - Attorneys' Eyes Only").

28 (b) for testimony given in deposition or in other pretrial or trial proceedings,

1 that the Party or non-party offering or sponsoring the testimony identify on the record, before the  
2 close of the deposition, hearing, or other proceeding, all protected testimony, and further specify  
3 any portions of the testimony that qualify as "Highly Confidential - Attorneys' Eyes Only."  
4 When it is impractical to identify separately each portion of testimony that is entitled to  
5 protection, and when it appears that substantial portions of the testimony may qualify for  
6 protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the  
7 record (before the deposition or proceeding is concluded) a right to have up to 20 days to identify  
8 the specific portions of the testimony as to which protection is sought and to specify the level of  
9 protection being asserted ("Confidential" or "Highly Confidential - Attorneys' Eyes Only").  
10 Only those portions of the testimony that are appropriately designated for protection within the 20  
11 days shall be covered by the provisions of this Stipulated Protective Order.

12 Transcript pages containing Protected Material must be separately bound by the court  
13 reporter, who must affix to the top of each such page the legend "Confidential" or "Highly  
14 Confidential - Attorneys' Eyes Only," as instructed by the Party or nonparty offering or  
15 sponsoring the witness or presenting the testimony.

16 (c) for information produced in some form other than documentary, and for  
17 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the  
18 container or containers in which the information or item is stored the legend "Confidential" or  
19 "Highly Confidential - Attorneys' Eyes Only." If only portions of the information or item  
20 warrant protection, the Producing Party, to the extent practicable, shall identify the protected  
21 portions, specifying whether they qualify as "Confidential" or "Highly Confidential - Attorneys'  
22 Eyes Only."

23 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
24 designate qualified information or items as "Confidential" or "Highly Confidential - Attorneys'  
25 Eyes Only" does not, standing alone, waive the Designating Party's right to secure protection  
26 under this Stipulated Protective Order for such material. If material is appropriately designated as  
27 "Confidential" or "Highly Confidential - Attorneys' Eyes Only" after the material was initially  
28 produced, the Receiving Party, on timely notification of the designation, must make reasonable

1 efforts to assure that the material is treated in accordance with the provisions of this Stipulated  
2 Protective Order.

3       5.4    Third Party Protected Materials. A Producing Party may designate materials in the  
4 manner described in section 5.2 if it reasonably believes in good faith that a third party may  
5 consider those materials to be "Confidential" or "Highly Confidential - Attorneys' Eyes Only."  
6 Material so designated by a Producing Party or by a third party shall be treated as Protected  
7 Material in accordance with the provisions of this Stipulated Protective Order.

8       **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

9       6.1    Timing of Challenges. Unless a prompt challenge to a Designating Party's  
10 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary  
11 economic burdens, or a later significant disruption or delay of the litigation, a Party does not  
12 waive its right to challenge a confidentiality designation by electing not to mount a challenge  
13 promptly after the original designation is disclosed.

14       6.2    Meet and Confer. A Party that elects to initiate a challenge to a Designating  
15 Party's confidentiality designation must do so in good faith and must begin the process by  
16 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)  
17 with counsel for the Designating Party. In conferring, the challenging Party must explain the  
18 basis for its belief that the confidentiality designation was not proper and must give the  
19 Designating Party an opportunity to review the designated material, to reconsider the  
20 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
21 designation. A challenging Party may proceed to the next stage of the challenge process only if it  
22 has engaged in this meet and confer process first.

23       6.3    Judicial Intervention. A Party that elects to press a challenge to a confidentiality  
24 designation after considering the justification offered by the Designating Party may file and serve  
25 a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)  
26 that identifies the challenged material and sets forth in detail the basis for the challenge. Each  
27 such motion must be accompanied by a competent declaration that affirms that the movant has  
28 complied with the meet and confer requirements imposed in the preceding paragraph and that sets



1 forth with specificity the justification for the confidentiality designation that was given by the  
2 Designating Party in the meet and confer dialogue.

3 The burden of persuasion in any such challenge proceeding shall be on the Designating  
4 Party. Until the court rules on the challenge, all parties shall continue to afford the material in  
5 question the level of protection to which it is entitled under the Producing Party's designation.

6 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

7 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed  
8 or produced by another Party or non-party in connection with this case only for prosecuting,  
9 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only  
10 to the categories of persons and under the conditions described in this Stipulated Protective Order  
11 and the contents thereof shall not be used for any business, commercial, governmental, or  
12 competitive purpose, or used in any manner in any other case, litigation or proceedings whether  
13 or not factually related to this action. When the litigation is terminated, a Receiving Party must  
14 comply with the provisions of section 11, below (FINAL DISPOSITION).

15 Protected Material must be stored and maintained by a Receiving Party at a location and  
16 in a secure manner that ensures that access is limited to the persons authorized under this  
17 Stipulated Protective Order.

18 7.2 Disclosure of "Confidential" Information or Items. Unless otherwise ordered by  
19 the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
20 information or item designated "Confidential" only to:

21 (a) the Receiving Party's Outside Counsel of record in this action, as well as  
22 employees of said Counsel to whom it is reasonably necessary to disclose the information for this  
23 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached  
24 hereto as Exhibit A;

25 (b) the present and former officers, directors, and employees (including  
26 House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this  
27 litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

28 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably



1 necessary for this litigation and who have signed the "Agreement to Be Bound by Protective  
2 Order" (Exhibit A);

3 (d) the Court and its personnel;

4 (e) any third party mediator(s) appointed by the Court or jointly selected by  
5 the parties to assist in a possible resolution of their dispute and who have signed the "Agreement  
6 to be Bound by Protective Order" (Exhibit A);

7 (f) court reporters, their staffs, and professional vendors to whom disclosure  
8 is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by  
9 Protective Order" (Exhibit A);

10 (g) during their depositions, witnesses in the action to whom disclosure is  
11 reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order"  
12 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal  
13 Protected Material must be separately bound by the court reporter and may not be disclosed to  
14 anyone except as permitted under this Stipulated Protective Order.

15 (h) the author of the document or the original source of the information.

16 7.3 Disclosure of "Highly Confidential - Attorneys' Eyes Only" Information or Items.

17 Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a  
18 Receiving Party may disclose any information or item designated "Highly Confidential -  
19 Attorneys' Eyes Only" only to:

20 (a) the Receiving Party's Outside Counsel of record in this action, as well as  
21 employees of said Counsel to whom it is reasonably necessary to disclose the information for this  
22 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached  
23 hereto as Exhibit A;

24 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably  
25 necessary for this litigation, (2) who have signed the "Agreement to Be Bound by Protective  
26 Order" (Exhibit A) , and (3) as to whom the procedures set forth in paragraph 7.4, below, have  
27 been followed;

28 (c) the Court and its personnel;

1 (d) any third party mediator(s) appointed by the Court or jointly selected by  
2 the parties to assist in a possible resolution of their dispute and who have signed the "Agreement  
3 to Be Bound by the Protective Order" (Exhibit A);

4 (e) court reporters, their staffs, professional vendors to whom disclosure is  
5 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by  
6 Protective Order" (Exhibit A); and

7 (e) the author of the document or the original source of the information.

8 7.4 Procedures for Approving Disclosure of "Highly Confidential - Attorneys' Eyes  
9 Only" Information or Items to Experts.

10 (a) Unless otherwise ordered by the court or agreed in writing by the  
11 Designating Party, a Party that seeks to disclose to an Expert any information or item that has  
12 been designated "Highly Confidential - Attorneys' Eyes Only" first must make a written request  
13 to the Designating Party that (1) identifies the specific Highly Confidential - Attorneys' Eyes  
14 Only information that the Receiving Party seeks permission to disclose to the Expert, (2) sets  
15 forth the full name of the Expert and the city and state of his or her primary residence, (3)  
16 attaches a copy of the Expert's current resume, (4) identifies the Expert's current employer(s), (5)  
17 identifies each person or entity from whom the Expert has received compensation for work in his  
18 or her areas of expertise or to whom the expert has provided professional services at any time  
19 during the preceding five years, and (6) identifies (by name and number of the case, filing date,  
20 and location of court) any litigation in connection with which the Expert has provided any  
21 professional services during the preceding five years.

22 (b) A Party that makes a request and provides the information specified in the  
23 preceding paragraph may disclose the subject Protected Material to the identified Expert unless,  
24 within seven court days of delivering the request, the Party receives a written objection from the  
25 Designating Party. Any such objection must set forth in detail the grounds on which it is based.

26 (c) A Party that receives a timely written objection must meet and confer with  
27 the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
28 agreement. If no agreement is reached, the Party seeking to make the disclosure to the Expert may

1 file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if  
 2 applicable) seeking permission from the court to do so. Any such motion must describe the  
 3 circumstances with specificity, set forth in detail the reasons for which the disclosure to the  
 4 Expert is reasonably necessary, assess the risk of harm that the disclosure would entail and  
 5 suggest any additional means that might be used to reduce that risk. In addition, any such motion  
 6 must be accompanied by a competent declaration in which the movant describes the parties'  
 7 efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer  
 8 discussions) and sets forth the reasons advanced by the Designating Party for its refusal to  
 9 approve the disclosure.

10 In any such proceeding the Party opposing disclosure to the Expert shall bear the  
 11 burden of proving that the risk of harm that the disclosure would entail (under the safeguards  
 12 proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

13 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
 14 **OTHER LITIGATION**

15 If a Receiving Party is served with a subpoena or an order issued in other litigation that  
 16 would compel disclosure of any information or items designated in this action as "Confidential"  
 17 or "Highly Confidential - Attorneys' Eyes Only," the Receiving Party must so notify the  
 18 Designating Party, in writing (by fax in advance, if possible) immediately and in no event more  
 19 than three court days after receiving the subpoena or order. Such notification must include a copy  
 20 of the subpoena or court order.

21 The Receiving Party also must immediately inform in writing the Party who caused the  
 22 subpoena or order to issue in the other litigation that some or all the material covered by the  
 23 subpoena or order is the subject of this Stipulated Protective Order. In addition, the Receiving  
 24 Party must deliver a copy of this Stipulated Protective Order promptly to the Party in the other  
 25 action that caused the subpoena or order to issue. The purpose of imposing these duties is to alert  
 26 the interested parties to the existence of this Stipulated Protective Order and to afford the  
 27 Designating Party in this case an opportunity to try to protect its confidentiality interests in the  
 28 court from which the subpoena or order issued. The Designating Party shall bear the burdens and

1 the expenses of seeking protection in that court of its confidential material - and nothing in these  
2 provisions should be construed as authorizing or encouraging a Receiving Party in this action to  
3 disobey a lawful directive from another court.

4 In the event that any information or items designated as "Confidential" or "Highly  
5 Confidential - Attorneys' Eyes Only," are provided pursuant to subpoena or compulsory process,  
6 such information shall continue to be treated as "Confidential" or "Highly Confidential -  
7 Attorneys' Eyes Only," by all persons subject to this Stipulated Protective Order unless and until  
8 the Court orders otherwise.

9 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

10 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
11 Material to any person or in any circumstance not authorized under this Stipulated Protective  
12 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
13 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c)  
14 inform the person or persons to whom unauthorized disclosures were made of all the terms of this  
15 Stipulated Protective Order, and (d) request such person or persons to execute the  
16 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

17 **10. FILING PROTECTED MATERIAL**

18 Without written permission from the Designating Party or a court order secured after  
19 appropriate notice to all interested persons, a Party may not file in the public record in this action  
20 any Protected Material. A Party that seeks to file under seal any Protected Material must comply  
21 with Civil Local Rule 79-5.

22 **11. FINAL DISPOSITION**

23 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days  
24 after the final termination of this action, each Receiving Party must return all Protected Material  
25 to the Producing Party. As used in this subdivision, "all Protected Material" includes all copies,  
26 abstracts, compilations, summaries or any other form of reproducing or capturing any of the  
27 Protected Material. With permission in writing from the Designating Party, the Receiving Party  
28 may destroy some or all of the Protected Material instead of returning it. Whether the Protected

Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and that affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

## 12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Stipulated Protective Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Stipulated Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Stipulated Protective Order.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: December 12, 2008

s/Joseph N. Kravec, Jr.  
Joseph N. Kravec, Jr. (*PRO HAC VICE*)  
Michael D. Braun (167416)  
Janet Lindner Spielberg (221926)  
Ira Spiro (67641)

*Attorneys for Plaintiff and the Proposed Class*

Dated: December 12, 2008

s/Nathan L. Garroway  
Nathan L. Garroway (*PRO HAC VICE*)  
Felicia Y. Feng  
David L. Balser (*PRO HAC VICE*)  
McKENNA LONG & ALDRIDGE LLP

*Attorneys for Defendant*

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.  
2

3 Dated: December 15, 2008  
4

  
Honorable Patricia V. Trumbull  
UNITED STATES

**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, [print or type full name], of [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of *Jonathan Kaltwasser et al. v. AT&T Mobility LLC f/k/a Cingular Wireless LLC*, 5:07-cv-00411-JF. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Stipulated Protective Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint [print or type full name] of [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_